

Jasper Benincasa Jr.
 Flocefida Benincasa
 9359 Roping Cowboy Avenue
 Las Vegas, NV 89178

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UNITED STATES
 BANKRUPTCY COURT
 DISTRICT OF NEVADA

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	)	BK-S-06-10725- <i>LBR</i>
LBR)	
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY)	
Debtor)	
In re:	)	BK-S-06-10726-
LBR)	
	)	Chapter 11
)	
USA CAPITAL REALTY ADVISORS, LLC,)	
Debtor)	
In re:	)	BK-S-06-10727-
LBR)	
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED)	
FUND, LLC,)	
Debtor)	
In re:	)	BK-S-06-10728-
LBR)	
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,)	
LLC,)	
Debtor)	
In re:	)	BK-S-06-10729-
LBR)	
	)	Chapter 11
USA SECURITIES, LLC,)	
Debtor)	
Affects:)	
<input type="checkbox"/> All Debtors)	
<input checked="" type="checkbox"/> USA Commercial Mortgage Co.)	
<input type="checkbox"/> USA Securities, LLC	)	DATE: 6/15/06
<input type="checkbox"/> USA Capital Realty Advisors, LLC	)	TIME: 9:30am
<input type="checkbox"/> USA Capital Diversified Trust Deed)	
<input type="checkbox"/> USA First Trust Deed Fund, LLC)	

**MOTION FOR ORDER AUTHORIZING RETURN OF NON-INVESTED FUNDS
OF JASPER BENINCASA JR. AND FLOCERFIDA BENINCASA
(hereafter "BENINCASA")**

Files a Motion for Order Authorizing Return of Non-Invested Funds of JASPER BENINCASA JR. AND FLOCERFIDA BENINCASA.

This Motion is based upon the Points and Authorities attached hereto.

POINTS AND AUTHORITIES

Facts

The Debtors receipted for \$110,000.00 of BENINCASA's money on the eve of the Chapter 11 filing to be invested in Fiesta Development, Del Valle Isleton (which has been repaid by the borrower according to the Debtor's recent loan summary) and Oak Shores II. The Del Valle loan has been repaid prior to any funds being transferred to Assignor and recordation of a Deed of Trust.

See check Exhibit "A" which cleared on April 12, 2006 the banking system the day prior to the Bankruptcy filing. These funds were advanced to no one prior to the filing of April 13, 2006. The Movant bases this on the fact that no Deed of Trust has been recorded and USA Capital has told JASPER BENINCASA JR. that funds were never advanced and are still in the trust account. This is BENINCASA's first investment with USA Capital therefore BENINCASA was never overpaid interest nor does BENINCASA owe anything to USA Capital. The funds were merely receipted for and placed into the trust account on the eve of bankruptcy. They were disbursed to no one and not used for any purpose.

The Law

Debtors and their affiliates are licensed by the State of Nevada Financial Institution Division as mortgage brokers or mortgage agents under NRS 645B.

Escrow Accounts are required under NRS 645B.165 through 175 and commingling is prohibited under NRS 645B.180. BENINCASA is the owner of funds placed into Trust prior to investment. It would appear that under NRS 645B, the Debtor cannot claim that any of "recent check" Represented by Exhibit "A", is property of the estate. Indeed NRS 645B.165 through 180 make it very clear that the funds are trust funds very similar to those in an attorney's trust account and are given the same protection. The law at NRS 645B.180 specifically states that "Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage broker or his mortgage agents." To the extent that Debtors have breached their fiduciary duties, they should be disqualified as servicing agents or indeed, as Debtors-in-Possession and should not be permitted to continue to invest private-investor funds after the filing of chapter 11.

The funds represented by Exhibit "A" do not belong to the Debtor and must be returned. This is clearly the law in our circuit. See Golden Mortgage v. Kennedy, 171 B.R. 79 (B.A.P. 9 Cir.) 1994. These funds are very different from the funds invested by other Investors who have a history with USA Capital and may owe USA Capital for overpayment of interest. The facts herein are very similar to those previously ruled on concerning return of investor's recently deposited easily identifiable funds which were not used for the intended purpose. See Motion for Order Authorizing Return of Investors Certain Escrowed Funds Intended for the Bundy Canyon Project filed herein on April 27, 2006 as Document #68.

BENINCASA funds have been held without being transferred to "Assignors" and no deeds of trust have been recorded. BENINCASA funds should be returned as per:

NRS 645B.175 para. 2 which states:

" Except as otherwise provided in this section, the amount held in trust pursuant to subsection 1 must be released:


- a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less the amount due the mortgage broker for the payment of any fee or service charge;
- b) If the loan or the transfer thereof is not consummated, to each investor who furnished the money held in trust; or
- c) Pursuant to any instructions regarding the escrow account."

NRS 645B.175 para. 8 which states:

"Money received by a mortgage broker and his mortgage agents pursuant to this section from a person who is not associated with the mortgage broker may be held in trust for not more than 45 days before an escrow account must be opened in connection with the loan. If, within this 45-day period, the loan or the transfer therefore is not consummated, the money must be returned within 24 hours. If the money is so returned, it may not be reinvested with the mortgage broker for at least 15 days".

Conclusion

The Motion to Allow Payment of Non-Invested Funds should be granted and the Funds not turned over to Assignors should be returned to Movant upon entry of the Order of this Court plus 11 days.

/s/ 
Jasper Benincasa Jr.
9359 Roping Cowboy Ave.
Las Vegas, NV 89178
702-413-8624
sv_flocerfida@yahoo.com

CERTIFICATE OF SERVICE

I, Jasper Benincasa, hereby certify that a true and correct copy of the foregoing
was forwarded to:

FRANKLIN C. ADAMS franklin.adams@bbklaw.com, arthur.johnston@bbklaw.com

KELLY J. BRINKMAN kbrinkman@gooldpatterson.com,

MATTHEW Q. CALLISTER mqc@callister-reynolds.com, maggie@callister-reynolds.com

CANDACE C CARLYON ltreadway@sheacarlyon.com,

ccarlyon@sheacarlyon.com; bankruptcyfilings@sheacarlyon.com; rsmith@sheacarlyon.com

KEVIN B. CHRISTENSEN kbchrislaw@aol.com,

JANET L. CHUBB tbw@jonesvargas.com

JEFFREY A. COGAN jeffrey@jeffreycogan.com, sarah@jeffreycogan.com

CICI CUNNINGHAM & nbs! p bankruptcy@rocgd.com

LAUREL E. DAVIS bklslclv@lionelsawyer.com,

ldavis@lionelsawyer.com;gbagley@lionelsawyer.com;ldavisesq@aol.com

THOMAS H. FELL BANKRUPTCYNOTICES@GORDONSILVER.COM

SCOTT D. FLEMING sfleming@halelane.com,

dbergsing@halelane.com,ecfvegas@halelane.com

EDWARD J. HANIGAN haniganlaw@earthlink.net, haniganlaw1@earthlink.net

CHRISTOPHER D JAIME cjaime@waltherkey.com, kbernhar@waltherkey.com

EVAN L. JAMES ejameslv@earthlink.net, kbchrislaw@aol.com

ANNETTE W JARVIS,

ROBERT R. KINAS ! rkinas@swlaw.com, mstrand@swlaw.com;

jlustig@swlaw.com;lholding@swlaw.com;imccord@swlaw.com

NILE LEATHAM nleatham@knevada.com,
ckishi@knevada.com;bankruptcy@knevada.com

WILLIAM L. MCGIMSEY lawoffices601@lvcoxmail.com,

RICHARD MCKNIGHT mcknightlaw@cox.net,

gkopang@lawlasvegas.com;cburke@lawlasvegas.com,sforemaster@lawlasvegas.com

JEANETTE E. MCPHERSON bkfilings@s-mlaw.com

DAVID MINCIN mcknightlaw@cox.net,

gkopang@lawlasvegas.com;dmincin@lawlasvegas.com,cburke@lawlasvegas.com,sfore
master@
lawlasvegas.com

JOHN F MURTHA ! jmurtha@woodburnandwedge.com

DONNA M. OSBORN jinouye@marquisaurbach.com,

dosborn@marquisaurbach.com;tszostek@marquisaurbach.com;jcrowe@MarquisAurbach
.com;k
gallegos@MarquisAurbach.com

DONALD T. POLEDNAK sandplegal@yahoo.com, spbankruptcy@yahoo.com

LENARD E. SCHWARTZER bkfilings@s-mlaw.com

SHLOMO S. SHERMAN ssherman@sheacarlyon.com,

aboehmer@sheacarlyon.com; bankruptcyfilings@sheacarlyon.com; ltreadway@sheacarlyon.com;

mmallet@sheacarlyon.com; rsmith@sheacarlyon.com

JEFFREY G. SLOANE gjklepel@yahoo.com, gklepel@kssattorneys.com

PETER SUSI cheryl@msmlaw.com, msm@msmlaw.com

CARYN S. T! JJSSELING cst@beesleyandpeck.com, aha@beesleyandpeck.com

U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov,

JOAN C WRIGHT jwright@allisonmackenzie.com, jbrooks@allisonmackenzie.com

MATTHEW C. ZIRZOW bankruptcy notices@gordonsilver.com

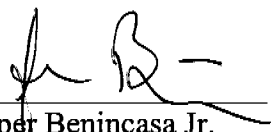
/s/ 
Jasper Benincasa Jr.
9359 Roping Cowboy Ave.
Las Vegas, NV 89178
702-413-8624

Exhibit "A"

Account: 1818239716
Check: 1001
Issued: April 11, 2006
Cleared: April 12, 2006
Amount: \$110,000.00
Deposited into: Wells Fargo Account
Account Name: Commercial Mortgage Company Investors Trust
Account
Account Number: 0465657146

